



Terms and Conditions

1. Acceptance, Effect of these Terms

- (a) By completing the Credit Application and signing this document and/or submitting a purchase order to us, the Customer agrees to accept these Terms and Conditions (**Terms**).
- (b) No amendment to these Terms is permitted without agreement of **NORD** in writing, and such agreement shall only be limited to the relevant purchase order.
- (c) **NORD** reserves the right to change these Terms on 30 days notice to you at any time in its sole and absolute discretion. Your continuation of a purchase order after that period or continued use of **NORD's** products and services will signify your acceptance of any amendment to these Terms.
- (d) Only a director of **NORD** is authorised to vary these Terms. **NORD's** sales representatives are not authorised to vary these terms, or to make any representations on our behalf.

2. Purchase Orders, Specifications

- (a) You may deliver to **NORD** a purchase order requesting the delivery of products or services by **NORD** to your specifications, or our specifications (as applicable).
- (b) On acceptance by **NORD**, a purchase order is an individual agreement governed by these Terms. **NORD** may accept or reject any purchase order.
- (c) A quotation by **NORD** as to price in or for the purposes of any purchase order is open for acceptance by you within 30 days of our issue to you of that quotation, unless we agree otherwise or the quotation provides for an alternative period of validity. If you instruct us to proceed you are deemed to accept the price and any additional terms in that quotation as part of the relevant purchase order.
- (d) These Terms apply to (and are deemed incorporated into) each purchase order and the products and services ordered by you and delivered by **NORD** to you. Any terms and conditions or the terms of any purchase order submitted by you for the provision of any goods or services by **NORD** do not apply unless agreed in writing by **NORD**. Any terms or conditions purporting to exclude any of these Terms is void.
- (e) **NORD** reserves the right to make changes to specifications in connection with any purchase order which:
 - (i) is required so that products or services will conform with any applicable safety or other statutory requirements; or
 - (ii) do not materially affect the quality or performance of the products or services.
- (f) In addition to any specifications, you agree after delivery to retain copies of any literature issued by **NORD** in relation to the provision of our products and services under any purchase order. Where appropriate, **NORD** may issue Customers with appropriate written information, hand outs or copies of records as part of any purchase order, for the benefit of both parties.
- (g) Cancellation by you of a purchase order is not permitted except where expressly agreed in writing by **NORD**. If **NORD** agrees to cancel a purchase order, you indemnify **NORD** for all loss **NORD** incurs or will incur as a result of the cancellation (including for loss of profit). Without limiting the effect of this clause, **NORD** reserves the right to charge you (and you accept the liability to pay) any administrative expenses and costs **NORD** incurs or has incurred as a result of your cancellation (including without limitation the cost of all labour and materials used associated with the purchase order), up to the date of the cancellation of the purchase order.

3. Credit Terms/Payment

- (a) Payment is due in full to **NORD** within thirty (30) days after the end of the month in which **NORD** issues an invoice to you, unless otherwise agreed by **NORD** in writing.
- (b) **NORD**:
 - (i) reserves the right to charge interest to the Customer at **NORD's** trading bank base rate calculated on a daily basis from the due date of payment;
 - (ii) reserves the right to recover debt collection fees from you which may be incurred in recovering any overdue invoice. You agree to pay all **NORD's** costs and expenses on a solicitor and own client basis if legal action is necessary to recover any overdue invoice; and
 - (iii) may at its sole discretion, withhold delivery of further products and services to you under any other purchase order or arrangement until the outstanding amount due to **NORD** plus interest and/or costs are paid in full.
- (c) You must pay the price for products or services supplied to you by bank transfer, cheque payable to **NORD** or by credit card (plus any charges that may be applicable), by direct debit or in any other way that **NORD** directs. Payment by cheque or other negotiable instrument is not regarded as received until it is cleared.
- (d) Returned cheques will incur a charge to cover banking fees and administrative costs. In an instance of a second returned cheque, **NORD** reserves the right to terminate the relevant purchase order or other arrangement and may insist on payment by you for all future purchase orders in cash only. Consequently, all other current purchase orders and transactions will cease and not proceed until such time until any outstanding monies are paid to or recovered by **NORD** in full.

4. Prices

- (a) Subject to the provisions of this clause 4, all prices quoted in a purchase order are inclusive of goods and services tax (**GST**) and **Ex Works** (as that term is defined in *Incoterms*, the International Chamber of Commerce official rules for the interpretation of trade terms).
- (b) The prices quoted in each purchase order are binding, subject to written notice advising otherwise by **NORD**, for thirty (30) days after the date of the quotation. Failure by you to accept a quotation means the quoted price is no longer valid.
- (c) **NORD** in its sole discretion may offer a Customer discount on prices. If a Customer is eligible for a discount and **NORD** proposes to reduce this discount, **NORD** will provide 30 days written notice before a reduction becomes effective.
- (d) Where the quotation allows for the payment of different currencies and/or includes freight costs and/or taxes and/or for any other reason beyond our control, the quotation shall be subject to price adjustments which will be reflected in the invoice and notified to the Customer as soon as these costs are determined by **NORD** and in any event, prior to delivery of the products or services.

5. Delivery

- (a) Unless agreed otherwise, deliveries are Ex Works at **NORD's** nominated premises. **NORD** accepts no liability for delays or default in delivery or transportation costs incurred, except where agreed in writing. Products may be delivered in advance of any scheduled delivery date after giving the Customer reasonable notice.
- (b) Risk of any loss, shortage, damage, theft or deterioration to the products shall be borne by the Customer from the time the products are at the disposal of the Customer at **NORD's**



nominated premises and despite any agreement for **NORD** to arrange transport of the products to any location.

- (c) **NORD** is not liable for any delay in delivery. You acknowledge that any date for delivery is an estimate only. Whilst **NORD** will use its reasonable endeavours to achieve delivery in accordance with your requirements or any purchase order, you agree that **NORD** is not liable for any loss of any kind whatsoever in connection with such delay.
- (d) **NORD** may deliver the products by separate instalments. Each separate instalment will be invoiced and paid in accordance with these Terms. Delivery of the products to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms. The failure of **NORD** to deliver the products does not entitle either party to treat any purchase order or this Contract as repudiated.
- (e) If the Customer requests delivery to be made outside normal working hours, the Customer shall pay to **NORD** an amount equal to any extra cost **NORD** incurs for transport.
- (f) If the Customer fails to take delivery of the products or fails to give adequate delivery instructions, without prejudice to any other right or remedy **NORD** may have, **NORD** may store the products until actual delivery and charge the Customer storage costs.

6. Returns and Defects

- (a) The Customer shall inspect the products and services on delivery and shall within sixty (60) days after delivery notify **NORD** of any alleged defect, shortage in quantity, damage or failure to comply with description or sample (**Defect**). Subject to any rights a Customer may have under the Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 1999* (Vic) (**Australian Consumer Law**):
 - (i) if a product or service delivered by **NORD** is Defective in any way the Customer must notify **NORD** in writing within sixty (60) days after delivery of the product or service;
 - (ii) the Customer must provide full particulars of the Defect(s) to **NORD** in writing within that 7 day period; and
 - (iii) returns of products will only be accepted for credit if **NORD** is notified in accordance with this clause 6(a).
- (b) The Customer must give **NORD** a reasonable opportunity to inspect the products prior to use, alteration or modification of the products whether in accordance with clause 11 or otherwise.
- (c) Where **NORD** undertakes any repair, return or replacement under this clause 6 or in accordance with clause 11, **NORD** agrees to cover the cost of freight and packaging for delivery to the Customer in respect of the relevant return, repaired product(s) and/or replacement product(s). However, the mode of freight, packaging and timing of delivery is at **NORD's** sole discretion and the Customer agrees it has no claim for delay or timing of the delivery or any such return, repaired or replacement product.
- (d) Subject to any rights a Customer may have under the Australian Consumer Law, if the Customer fails to comply with these provisions, the products and services shall be conclusively presumed to be free from any Defect which would be apparent on a reasonable examination of the products and services and the Customer shall be deemed to have accepted the products and services. No returns of Defective products (or claims for Defective services) shall be accepted by **NORD** if not made by the Customer within sixty (60) days after the date of delivery.

7. Intellectual Property, Patents and Copyright

- (a) Copyright in all drawings, specifications and other technical information provided by **NORD** concerning any product or

service under this Contract or any purchase order is vested in **NORD**. Other than any existing intellectual property rights that you independently developed or own prior to entering into this Contract or any purchase order, by these Terms you hereby assign all right, title and interest in any specifications in connection with the provision by **NORD** of any product or service under a purchase order.

- (b) If the products and services are to be supplied by **NORD** to the Customer's specifications, the Customer:
 - (i) warrants that the manufacture and supply of the products and services by **NORD** will not infringe any patent, copyright, registered design or other intellectual property rights of any other person; and
 - (ii) indemnifies **NORD** against any liability it incurs (including any costs and expenses) as a result of any claim that the manufacture or supply of the products and services by **NORD** infringes any patent, copyright, registered design or other intellectual property rights of any other person.

8. Ownership and Title

- (a) Until payment in full has been received by **NORD** and cheque or any other payment methods are cleared by our bank for the products and/or services supplied by **NORD** to you, as well as all other amounts owing to **NORD** to you under any other purchase order or any other contract with you:
 - (i) ownership of and title to the products and services shall not pass to you and remain with **NORD**;
 - (ii) subject to clause 8(a)(iii), you must keep the products separate from other goods and maintain the labelling and packaging of **NORD** so that they are readily identifiable as the property of **NORD**;
 - (iii) you must not sell the products except in the ordinary course of your business;
 - (iv) in addition to any rights **NORD** may have under Chapter 4 of the PPSA, **NORD** may, without notice, enter any premises where it suspects the products may be located and remove them without committing a trespass, even though they may have been attached to other goods or land not the property of **NORD**, and for this purpose you irrevocably license **NORD** to enter such premises and also indemnify **NORD** from and against all loss suffered or incurred by **NORD** as a result of exercising its rights under this clause. If there is any inconsistency between **NORD's** rights under this clause 8(a)(iv) and its rights under Chapter 4 of the PPSA, this clause 8(a)(iv) prevails;
 - (v) you acknowledge and warrant that **NORD** has a security interest (for the purposes of the PPSA) in the products and any proceeds until title passes to the Customer in accordance with this clause. You must do anything reasonably required by **NORD** to enable **NORD** to register its security interest, with the priority **NORD** requires and to maintain that registration; and
 - (vi) the security interest arising under this clause attaches to the products when you obtain possession of the products and the parties confirm that they have not agreed that any security interest arising under this clause attaches at any later time.
- (b) Without limiting the provisions of this clause 8, any right you may have to sell and use the products and any services of **NORD** automatically ceases if:
 - (i) you make any voluntary arrangement with your creditors or become subject to an administration order, or (being an individual or firm) become bankrupt or (being a company) go into liquidation;
 - (ii) an administrator, receiver or administrative receiver is appointed over any of your property;



- (iii) you cease, or threaten to cease, to carry on business; or
- (iv) **NORD** reasonably apprehends that any of the events mentioned above is about to occur and we notify you accordingly.

9. Third Party Claims

- (a) The Customer must:
 - (i) promptly inform **NORD** of all complaints or claims relating to any of the products or services;
 - (ii) not admit liability on behalf of **NORD** in respect of any complaint or claim relating to any of the products or services;
 - (iii) not resolve or settle any complaint or claim relating to any of the products or services which may result in **NORD** incurring any liability (whether to any of your customers, or any other person); and
 - (iv) deal promptly with all complaints or claims relating to any of the products or services, which will not result in **NORD** incurring any liability.

10. Warranty

- (a) If **NORD** fabricates the products and services, **NORD** will guarantee the fabrication against faulty workmanship and provide the following warranties:
 - (i) for mechanical products - a warranty for a period of 24 months; and
 - (ii) for electrical products - a warranty for a period of 12 months.
- (b) The warranties do not extend to consumables or to defects caused by improper installation, improper or abnormal use, improper maintenance, rust or pollution, unauthorised repair or modification of the products or faulty design and manufacture resulting from the Customer's specifications.
- (c) The benefits given by the warranties under these Terms are additional to other rights and remedies that you may have under any laws in relation to the products and services. Our products come with guarantees that cannot be excluded under the Australian Consumer Law.

11. Limitation of Liability

- (a) The Australian Consumer Law provides consumers with a number of consumer guarantees, as that term is used in the Australian Consumer Law (**Consumer Guarantees**) that cannot be excluded or limited. The limitations of liability set out in these Terms are therefore subject to, and will not apply to the extent that they limit or exclude, such Consumer Guarantees applicable to consumers. However where the Australian Consumer Law permits **NORD** to limit the remedies available to it for a breach of a Consumer Guarantee, **NORD** hereby limits its remedies to such consumers, in its sole discretion to, in the case of products:
 - (i) the replacement of the product or the supply of equivalent products;
 - (ii) the repair of the products;
 - (iii) the payment of the cost of replacing the products or of acquiring equivalent products; and/or
 - (iv) the payment of the cost of having the products repaired, andin the case of services:
 - (v) the supplying of the services again; or
 - (vi) the payment of the cost of having the services supplied again.
- (b) For all claims not made under the Consumer Guarantees:
 - (i) **NORD's** liability for any claims whatsoever in respect of products and services sold here under shall not exceed the price of the product and/or service paid to **NORD** and

- (ii) the Customer assumes all risks and liability for the products and services purchased from **NORD** and their use upon and after dispatch from **NORD's** premises;
- (iii) **NORD** limits its remedies to Customers and any third party, in its sole discretion to, providing credit up to the price of the product paid to **NORD** or repairing the product;
- (iii) any repairs to products will be done at such place as **NORD** specifies and the Customer is responsible for cartage of the products and services or parts of the products and services as is necessary to and from the place so specified. The repair of the products under this clause does not include the cost or removal of defective material and fixing replacement material;
- (iv) **NORD** may repair or replace products at its sole option which **NORD** agrees are Defective if the use of that product(s) within:
 - (A) 3 months after delivery is at a rate of twice per 8 hour shift per business day; or
 - (B) 6 months after delivery is at a rate of once per 8 hour shift per business day;
- (v) the warranties under these Terms do not apply to products which have been:
 - (A) repaired or fitted by any person not authorised by **NORD**;
 - (B) used for purposes other than that for which they were intended; or
 - (C) used, handled, maintained, stored in any manner contrary to any instructions, manual, guidelines or catalogue rating provided by **NORD**;
- (vi) the warranties under these Terms do not apply to any claims of Defect made more than 1 year after the date of delivery.
- (c) Despite any provision of these Terms or a purchase order, you agree that **NORD** shall not be liable for Defects in products on the basis that the product does not meet applicable Australian and/or international standards unless **NORD** specifically warranted in a purchase order that the product is to be manufactured to comply with a particular standard.
- (d) Despite any provision of these Terms, a purchase order or this Contract, **NORD** shall not be liable for any special, indirect, incidental, economic or consequential loss or damage howsoever arising or howsoever caused (including without limitation loss of contracts, loss of profit or anticipated profit, loss of business opportunity, loss of data, loss of revenue or loss resulting from wasted management time) whether from negligence, wilful acts or omissions of **NORD** (or any of its officers, employees, agents, contractors or related entities) or otherwise in connection with the supply, functioning or use of the products and services, even if such loss was within the reasonable contemplation of the parties at the time this Contract or the relevant purchase order was entered into.
- (e) Nothing in these Terms or any purchase order shall limit either party's liability for death or personal injury arising from the proven negligence by itself or its employees or agents. However, for all claims made against **NORD** by the Customer under or in connection with a purchase order, **NORD's** maximum liability in the aggregate shall be limited to the price in that purchase order.

12. Indemnity

- (a) The Customer indemnifies **NORD** and holds it harmless against any loss or damage which **NORD** suffers, incurs or is liable for in connection with this Contract including, but not limited to:
 - (i) any act or omission of the Customer;
 - (ii) any breach of this Contract or purchase order by the Customer;



- (iii) enforcing any security interest arising under this Contract or purchase order;
 - (iv) any liability to third parties arising out of the Customer's use of the products and services; and
 - (v) any liability to third parties arising out of **NORD's** manufacture or modification of products to the Customer's specifications,
- but excluding loss or damage which **NORD** suffers to the extent that the loss or damage was caused by a breach of the Australian Consumer Law or any other applicable laws by **NORD**.

13. Force Majeure

NORD will not be liable to the Customer for any loss or product damage suffered by the Customer as a direct result of **NORD** or its sub-contractors from whom the sample or other service or material is derived being unable to perform a purchase order in the way agreed by reason of cause beyond its control including act of God, accident, war, riot, lockout, strike, flood, fire, power failure, breakdown of plant or machinery, delay in transit, postal delay, or any other unexpected or exceptional cause or circumstance.

14. GST

- (a) Any reference to this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) To the extent that any supply made under or in connection with this Contract is a taxable supply, the recipient must pay, in addition to the consideration to be provided under this Contract for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that **NORD** has first issued to the recipient a tax invoice in respect of that taxable supply.

15. Enforcement of Security Interests, PPSA Notices

- (a) If Chapter 4 of the PPSA applies to the enforcement of the security interest created under this Contract, the Customer agrees that the following provisions of the PPSA will not apply:
 - (i) section 95 (notice of removal of accession), to the extent that it requires **NORD** to give a notice to the Customer;
 - (ii) section 121(4) (enforcement of liquid assets-notice to grantor);
 - (iii) section 130 (notice of disposal), to the extent that it requires **NORD** to give a notice to the Customer;
 - (iv) paragraph 132 (3) (d) (contents of statement of account after disposal);
 - (v) subsection 132 (4) (statement of account if no disposal);
 - (vi) section 135 (notice of retention);
 - (vii) section 142 (redemption of collateral); and
 - (viii) section 143 (reinstatement of security agreement).
- (b) **NORD** does not need to give the Customer any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

16. Privacy Statement

- (a) **NORD** is committed to protecting your privacy. Authorised employees within **NORD** on a need to know basis will only use any information collected from individual Customers. **NORD** collects and uses personal information **NORD** collected about you for the purpose of providing you with **NORD's** products and services, including in assessing the Credit Application and establishing and operating any credit account as a result.

- (b) If **NORD** does not collect personal information **NORD** may be unable to provide you with its products and services, including extending trade credit. You, the Customer, authorise **NORD** to collect, maintain, use and disclose its personal information/the personal information for the purposes of assessing and determining whether or not to extend trade credit; processing your credit application; providing you with products and/or services; accepting and processing payments from you; notifying other credit providers of your defaults; exchanging information about your credit status where you are in default with another credit provider; assessing your partners and directors' creditworthiness; collecting overdue payments, managing credit, helping you avoid default on credit obligations and taking action in the event of your fraud or other serious credit infringement.
- (c) **NORD** may also disclose your personal information to regulatory bodies where this is required by law.
- (d) **NORD** may disclose your personal information to its related bodies, service providers and business partners overseas, specifically in Germany and in New Zealand and the Asia Pacific.
- (e) You have the right to request access to the personal information that **NORD** holds about you, on the proviso that **NORD** is given reasonable notice of such a request and **NORD** may charge a reasonable fee for access. Further information about how you can access the personal information that we hold about you, and also how you can seek correction of that personal information, and how to make a complaint about a breach of privacy is set out in **NORD's** privacy policy. A full copy of **NORD's** privacy policy is available on request.
- (f) If there are any changes to our privacy policy, we will announce that these changes have been made. If there are any changes in how we use our customer's personal information, notification by e-mail or postal mail will be made to those affected by this change. Any changes to our privacy policy will be made from time to time on our website at www.nord.com sent out in writing 30 days prior to these changes taking place. You are therefore advised to re-read our privacy policy on a regular basis.
- (g) **NORD** will not sell, share, or rent your personal information to any third party or use your e-mail address for unsolicited mail. Any emails sent by **NORD** will only be in connection with the provision of agreed products and services.

17. Confidentiality

- (a) Both parties shall maintain strict confidence and shall not disclose to any third party any confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information, customer or supplier lists and any other information or material relating to the other or the other's business or the products or services which come into that party's possession (**Confidential Information**) and shall not use such information and material without written permission by the other party.
- (b) The Customer is authorised to use the Confidential Information for the sole purpose of this Contract and any purchase order, and must not otherwise use or disclose any Confidential Information for any other purpose. This provision shall not, however, apply to information or material which must be disclosed by force of law or which is, or becomes, public knowledge by means other than by breach of any law or legal obligation.
- (c) In addition to and without derogating from the confidentiality obligations of the parties set out in clauses 17(b) and 17(c), neither party will disclose to a person or entity that is not a party to this Contract information of the kind mentioned in section 275(1) of the *Personal Property Securities Act 2009* (Cth)

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(PPSA) unless section 275(7) of the PPSA applies or that information is publicly available.

18. General

- (a) Notices under this Contract or any purchase order must be in writing and addressed to the authorised representative of the other party at their notified business address or email address. Any notice in respect of the variation of any of these Terms, specifications or price from **NORD** may only be issued by a director of **NORD** (or his/her authorised delegate notified to the Customer). Notices received after business hours will be deemed accepted on the following business day. Notices sent by post must be sent by registered post. Notices will be deemed accepted by the receiving party:
- (i) if sent from a place within Australia by registered post, at 9.00 am on the sixth (6th) business day after the date of posting;
 - (ii) if sent from a place outside Australia by airmail, at 9.00am on the twelfth (12th) business days after the date of posting;
 - (iii) if sent by facsimile, at the time indicated by the sending party's transmission equipment as the time that facsimile was sent in its entirety; and
 - (iv) if sent by email, when the email (including any attachment) is sent to the receiving party at their email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.
- (b) **NORD** and the Customer are independent contracting parties and nothing in these Terms makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other.
- (c) Any disagreement between **NORD** and the Customer will be determined in accordance with the laws of Victoria, Australia. The parties agree to the non-exclusive jurisdiction of the courts of Victoria for the determination of any dispute between them under or in connection with this Contract.